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HAND-DELIVERED

Ms. Nancy Cole
Docket Control
ARIZONA CORPORATION COMMISSION
1200 West Washington
Phoenix, Arizona 85007

**Re: Customer Proprietary Network Information (CPNI) Process Investigation
(Docket No. RT-00000J-02-0066)**

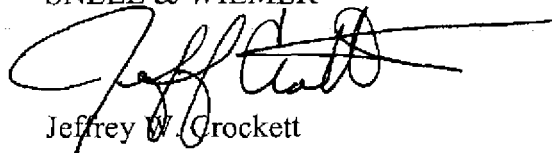
Dear Nancy:

On behalf of Valley Telephone Cooperative, Inc., Copper Valley Telephone, Inc. and Valley Telecommunication Company, Inc. (collectively, the Valley Companies"), I have enclosed an original and ten copies of the Valley Companies' responses to the questions contained in Director Johnson's memo dated February 15, 2002 in the above-captioned docket.

If you have any questions or comments, please do not hesitate to contact me at the phone number set forth above.

Very truly yours,

SNELL & WILMER



Jeffrey W. Crockett

JWC:gdb

Enclosures

cc (with enclosures): Ernest G. Johnson, Director
Chris Kempley, Legal Division
Maureen Scott, Legal Division
Matt Rowell, Utilities Division
Virgil Barnard

Crockett\PHX\1159577.1

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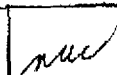
LAS VEGAS, NEVADA

Arizona Corporation Commission

DOCKETED

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ATTACHMENT A with comments

CPNI ISSUES LIST

1. *The following questions relate to the adoption of an Opt- In policy for use of CPNI as opposed to an Opt-Out policy:*

- a. *Does your company currently share CPNI with other affiliated entities? Does your company use an opt-in or opt-out policy for CPNI sharing? When did you implement this policy? Please provide a copy of the notice that your company sent to its Arizona customers. If you have used an opt-out policy, please provide any data you may have regarding the percentage of customers which opted out and identify the costs associated with administering an opt-out policy.*

The Valley Companies (Valley Telephone Cooperative, Inc.; Copper Valley Telephone, Inc. and Valley Telecommunication Company, Inc.) do not share CPNI data between affiliated entities. It is important to note the distinction made by the FCC between public domain data (directory, etc.) and CPNI.

- b. *Prior to the Tenth Circuit Decision which vacated portions of the FCC rules, did your company share CPNI with other affiliated entities? Did your company use an opt-in policy as required by the FCC rules? Please provide any data you may have regarding the percentage of customers opting in and the costs associated with administering an opt-in policy.*
- c. *Please identify any competitive concerns associated with the use of an opt-out versus an opt-in policy. If there are competitive concerns associated with an opt-out policy, please identify them with specificity and describe how any adverse competitive impacts would actually occur.*

The imposition of a strict opt-in policy will not only limit the abuse of CPNI data, it will also make certain customer service opportunities impossible. In our case we have the ILEC providing service with another affiliate providing wireless and internet services. One of our planned service offerings is combined billing for all services from our family of companies, which would offer the consumer more convenience. Another of our planned services is bundled services, which would provide savings for the consumer who signs up for specified groups of services.

- d. *Is the "implied consent" assumed by an opt-out policy consistent with the language of Section 222 of the Federal Act? Please identify any harms associated with "implied consent" for release of individually identifiable CPNI collected by telecommunications carriers.*
- e. *Do you agree with the Tenth Circuit's finding that communications between telecommunications carriers and their affiliates, divisions and employees constitute "commercial speech" for First Amendment purposes?*

- f. *Does a consumer's privacy interest in CPNI rise to a level such that there is a substantial state interest in its protection? The Tenth Circuit identified a substantial state interest in protecting people from the disclosure of sensitive and potentially embarrassing personal information. Please identify any other substantial state interests involved?*
- g. *Does the fact that the Arizona constitutional right to privacy has been interpreted more broadly than the Federal Constitution support the adoption of an opt-in policy in Arizona?*

The right to privacy does not seem to be the issue. The consumer is always entitled to privacy but they are also entitled to information that could allow them to more cost-effectively utilize communications services. Without the use of some CPNI data, it would be impossible to assure that the appropriate information was provided to the right consumers. The issue is more properly described to be, what type of consumer consent is required?

- h. *Is an opt-out policy sufficient to protect the substantial state interests involved in protecting people from the disclosure of sensitive and potentially embarrassing personal information?*

If an opt-out policy is drawn closely enough, it can allow limited uses of CPNI data for legitimate business purposes (see response to Question 1-c) while protecting the consumer from disclosure of personal information.

- i. *How would an opt-in policy alleviate concerns identified with the release of individually identifiable CPNI? Is an opt-in policy sufficiently narrowly tailored to overcome any First Amendment concerns or should the Commission consider a more flexible opt-in policy?*
- j. *Does your company disclose CPNI to any non-affiliated companies? Under what circumstances would you release CPNI to a non-affiliated company?*
- k. *Please comment on Arizona Revised Statutes Section 40-202(C)(5) and the importance of it with regard to any rules that the Commission adopts:*

This citation appears to provide the Commission with the authority to adopt a rule that protects the consumer while allowing the appropriate utilization of CPNI data to allow enhanced service to the customer.

- l. *Would an opt-in policy result in additional benefits to consumers relative to an opt-out policy? Explain in detail why or why not.*

With a strict opt-in policy, the percentage of non-responses will result in very small numbers of customers affirming an interest. It would thus be impossible to provide direct

mail explanation of the benefits of discounts via bundled services or convenience of combined billing. In our rural counties the scarcity/absence of ready media outlets limits general advertising that can reach all of our customers. As a consequence, it is important to protect the ability to share certain types of CPNI data between affiliates for allowable marketing.

- m. Is the CPNI data collected by telecommunications companies different from the personal data collected by companies in other industries (e.g., banks)? If so, do those differences provide support for an opt-in policy as opposed to an opt-out policy? Explain in detail why or why not.*
- n. Would an opt-in policy result in any additional costs to telecommunications providers relative to an opt-out policy? Explain in detail what the source of the additional costs would be, if any.*

An opt-in approach would take multiple mailings in order to get adequate response, if that is possible.

- o. What is the difference in customer response likely to be if an opt-in policy is used instead of an opt-out policy? Explain in detail the basis for your answer, citing any studies that support it.*

Because of the tendency to discard items that do not have immediate obvious interest of the consumer, an opt-in policy would result in very limited participation. Most of the consumers are likely to simply not respond at all, since they are likely to not recognize the potential benefit.

- p. Would an opt-in policy create any logistical or administrative problems for telecommunications companies relative to an opt-out policy? Explain in detail the basis for your answer.*
2. *The following questions relate to the content and format of the telecommunications companies provide to their customers regarding CPNI:*
- a. Do the issues regarding such notice change substantially if an opt-in policy is used instead of an opt-out policy? Please explain in detail.*

It is important that any notice whether opt-in or opt-out be prepared in such a way as to clearly indicate the issues and opportunities. But it will be impossible to anticipate every beneficial use of such data. As a cooperative with wholly owned subsidiaries we have a special obligation to make sure that we are protecting our members, since they can (and have) through the directors that they elect change the course of the company.

- b. Should notice be provided in multiple languages? If so, what languages should the notice be provided in?*

Because of system limitations, we cannot economically provide notices in other languages. When notices are required in multiple languages it quickly becomes administratively cumbersome and expensive. This has been true of every system we have used in the past, and it is likely to be true of future systems that are provided by vendors with a limited customer base in Arizona.

- c. Should rules be adopted to regulate the form that such notice should take, e.g. should the notice be required to be on a separate page, should a specific font size be required, etc.? If so, what should the requirements of such a rule be? Please explain and support your answer in detail.*

Because of system limitations, it is frequently impossible to economically comply with detailed notice requirements. This has been true of every system we have used in the past, and it is likely to be true of future systems that are provided by vendors with a limited customer base in Arizona.

- d. Should rules be adopted to regulate the content of such notice? If so what should be required? Please explain and support your answer in detail.*

Any rules regulating content of such notices should be focused on clarity and understandability, recognizing layman's language will be easier for our customers, many of which are elderly.

- e. Should rules be adopted that standardize the title and labeling of such notice? If so what should be required? Please explain and support your answer in detail.*

Consumers could benefit from some standardizing of terminology and titles. This should allow for more effective general consumer education efforts.

- f. Is the CPNI data collected by telecommunications companies different from the personal data collected by companies in other industries (e.g., banks)? If so, do those differences provide support for imposing different noticing requirements for telecommunications companies than those faced by companies in other industries? Explain in detail why or why not.*

The information collected by banks is extremely confidential. Such information as spending habits could be very embarrassing if it is used improperly. Most CPNI data that could be used by telecommunications companies is as innocuous as the type of service subscribed. CPNI does include the very confidential data on who is being called. There seems to be no justification for different rules for telecommunications companies from those rules prescribed for banks because the data collected is no more deserving of confidentiality.

- 3. The following questions relate to how often telecommunications companies should be required to provide notice of CPNI issues:*

- a. *For existing customers how often should telecommunications companies send notice of their CPNI policies if an opt-in system is used? If an opt-out system is used? Please explain your answer in detail.*

With either approach, the follow-up notices should be provided no more often than annually. This will allow compliance to be done along with other currently required annual follow-up.

- b. *For new customers when should telecommunications companies send notice of their CPNI policies if an opt-in system is used? If an opt-out system is used? Please explain your answer in detail.*

New customers should receive the notice for either approach by the date of the first bill, since that is when other notices are currently being provided.

- c. *For customers that are terminating service with a given company is any notice of CPNI policies necessary if an opt-in system is used? If an opt-out system is used? If so, explain in detail what is necessary and why it is necessary.*

If an adequate job has been done in educating the consumer, it is difficult to see any purpose of such a notice if the rules limit the use of CPNI data to win-back and related efforts.

4. *The following questions relate to the responsibilities telecommunications companies should have for CPNI data of former customers:*

- a. *If a customer terminates service with a given company should the company be obliged to destroy that customers CPNI data? Explain in detail why or why not.*

Federal Law specifically allows use of CPNI data for billing purposes. CPNI data is by its nature a part of the basic records of a company, it would be impossible to destroy such data without crippling the ability to deal with normal business issues. The inability to respond to customers returning to service (winter visitors) or to answer billing questions is obvious. It could become impossible to prove account balances in collections situations. The contract requirements for Billing & Collection agreements between ILECs and IXCs require the retention of such data.

- b. *If a customer terminates service with a given company should the company be permitted to use that customers CPNI data to market to that customer? That is, should companies be permitted to use CPNI data in win-back efforts? Explain in detail why or why not.*

The purpose of the 96 Act is to promote competition; win-back efforts are critical to healthy competition. Without CPNI data a win-back effort would be significantly impaired, in that it would be very difficult to offer the consumer products that fit the situation.

- c. *If a customer terminates service with a given company should the company be permitted to use that customers CPNI data for any purpose? Explain in detail what should and should not be allowed and why?*

The ability to use CPNI data will allow targeted marketing of services that fit the consumers' needs. This type of marketing can efficiently provide the consumer more value while satisfying the specific needs of the consumer.

5. *The following questions relate to the verification telecommunications companies provide to their customers that have opted -in or opted-out:*

- a. *If an opt-out system is used, should companies be required to provide notice to their customers that they have successfully opted-out? Should companies be required to provide notice to their customers that they have not chosen to opt-out? Explain in detail why or why not.*

If such a notice is required it should be simple and easy to provide without incurring significant cost. One workable option for providing a reminder to all consumers of their selection would be to include a line on the bill each month.

- b. *If an opt-in system is used, should companies be required to provide notice to their customers that they have successfully opted-in? Should companies be required to (or allowed to) provide notice to their customers that they have not chosen to opt-in? Explain in detail why or why not.*
- c. *For either an opt-in or opt-out system, should rules be adopted to govern the form of verification notices? If so, what should be required? For example, should verification be required to be in writing or telephonic verification acceptable? Explain and justify your answers in detail.*

Any notice required should not be cumbersome and expensive to provide. The simplest notice would be a single line notice on the monthly bill could allow the consumer to confirm their election choice.

- d. *For either an opt-in or opt-out system, should rules be adopted to govern the content of verification notices? If so, what should be required? Explain and justify your answers in detail.*
6. *What obligations should telecommunications companies have regarding CPNI data for customers who have opted-out (or not opted-in)?*

Depending on how CPNI data is defined, it could include billing and service records that are crucial to the ongoing business of the company. Any obligations in this regard should

be tempered by the requirement to maintain proper records that support continuing operations.

7. *The following questions relate to the sharing of CPNI data with affiliates or non-affiliates:*

- a. *Should there be restrictions placed on the entities that telecommunications companies can share CPNI data with? For example, should companies be permitted to sell CPNI data to outside entities or should the sharing of CPNI data be limited to affiliates? Does 47 U.S.C. Section 222 permit CPNI sharing with non-affiliates under any circumstances? Provide detailed justification for your answer.*

The rules should not allow the use of CPNI by any entity outside the corporate group of affiliates of the carrier. Sale of such information to outside entities will expose the consumer to excessive risk of abuse of the data.

- b. *If telecommunications companies profit from the sale of CPNI data should there be a requirement that they share those profits with the customers who have opted-in or not opted-out? For example, should such customers receive discounts?*

Since we believe that CPNI data should only be used by affiliated companies to improve service and provide discounted bundled services to the consumer, no profit from the sale of CPNI data will occur.

- c. *Should there be any restrictions on how CPNI data is used by affiliates of telecommunications companies? If so, what are they and how could such requirements be enforced? Justify your answer in detail.*

As a cooperative with wholly owned subsidiaries, it is essential that we remain consumer friendly. The members, who are the consumers, can readily change the way we do business. Since the FCC has regulated CPNI use by type of service, why should it matter if wholly owned affiliates use the CPNI data? Company organization should not prohibit activities that would be allowed if all done within one company. In addition, it is important to recognize the difference between a large company and a small local company. We live in the communities we serve and thus deal face to face with the customer rather than the customer dealing impersonally with a call center located many miles away.

- d. *Should there be any restrictions on how CPNI data is used by non-affiliates of telecommunications companies? If so, what are they and how could such requirements be enforced? Justify your answer in detail.*

No CPNI data should be used by non-affiliates of telecommunications companies. The risk of abuse of the data is too great if it is made available to outside entities.

8. *Besides an all-inclusive opt-out or opt-in policy, is there merit to a partial opt-in policy? That is, is there merit to requiring an opt-in policy for some categories of customers but allowing an opt-out policy for other categories? Explain in detail why.*

If the final policy is opt-in only and the expectation of participation in an opt-in policy is minimal, consideration should be given to any flexibility that is possible. As stated previously, some uses of CPNI can be wholly beneficial to the consumer in both convenience and cost. Such programs would include the bundling of services from affiliated companies and the combination of bills from affiliated companies into a single bill. As a cooperative, with wholly owned subsidiaries, that is truly owned and controlled by the customers we serve, the potential for abuse is minimized by the close connection with the consumer. Additionally, the fact that the Valley Companies are small local companies means that we are acutely attuned to consumer desires, which will minimize the potential for abuse of such data.